

**Homestead Electric & Machine Co., Inc. and International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, Local 643, AFL-CIO. Case 6-CA-23633**

March 25, 1992

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

A charge was filed by International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, Local 643, AFL-CIO (the Union) on May 23, 1991, and a first amended charge was filed by the Union on July 15, 1991. On July 18, 1991, the General Counsel of the National Labor Relations Board issued a complaint against Homestead Electric & Machine Co., Inc. (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act by unilaterally discontinuing health insurance coverage for its employees. On July 26, 1991, the Respondent filed a letter, with multiple attachments, admitting it discontinued providing health insurance coverage, but asserting that the discontinuance of coverage was caused by its inability to pay the premium costs for such coverage due to financial difficulties.

On December 20, 1991, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached, asserting that the Respondent's July 26, 1991 letter in response to the complaint is inadequate to serve as an answer under the requirements of Section 102.20 of the Board's Rules and Regulations in that it does not specifically admit, deny, explain, or state that the Respondent is without knowledge as to each and every allegation of the complaint. Therefore, the General Counsel submits, each and every complaint allegation should be deemed by the Board to be admitted as true, and should be so found by the Board.

In the alternative, the General Counsel asserts that assuming *arguendo* that the Respondent's letter in response to the complaint is construed as an adequate answer in this matter, the letter essentially admits the allegations that the Respondent on or about March 19, 1991, discontinued health insurance coverage for its employees, that this subject is a mandatory subject for the purpose of collective bargaining, and that the Respondent discontinued the health insurance coverage without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the Respondent's employees. The General Counsel maintains that

these allegations are the gravamen of the violation alleged in the complaint, and that these allegations should therefore be deemed by the Board to be admitted and that the Board should find these allegations, as well as all other allegations in the complaint to be true. The General Counsel further notes that the letter does not deny the jurisdictional allegations in the complaint and that these allegations should also be deemed to be admitted.

On December 30, 1991, the Board issued an order transferring proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On January 30, 1992, the Respondent filed a letter with the Board, with exhibits attached, including its July 6, 1991 letter to the Region.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

We agree with the General Counsel that the Respondent's answer does not meet the requirements of the Board's Rules and Regulations, and that all the allegations in the complaint shall be deemed admitted to be true. We also agree that even if the Respondent's July 26, 1991 letter was construed to be an answer within the meaning of Section 102.20 of the Board's Rules and Regulations, the letter does not deny any of the complaint allegations and therefore, all the allegations in the complaint would be deemed to be true. *Flood City Brass & Pump Co.*, 296 NLRB No. 28 slip op. at 2 fn. 1 (Aug. 22, 1989).<sup>1</sup>

**Ruling on Motion for Summary Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the Complaint shall be deemed to be admitted to be true and shall be so found by the Board." The Respondent sent a letter

<sup>1</sup> The Respondent asserts as an affirmative defense in its July 26, 1991 letter and in its January 30, 1992 letter responding to the Notice to Show Cause, that it was unable to pay the premium costs for the health insurance coverage due to financial difficulties. The Respondent further asserts that it has made unsuccessful attempts to secure other health care coverage. The Respondent does not assert that it notified or bargained to agreement with the Union prior to its discontinuance of health care coverage for its employees on or about March 19, 1991.

Neither a claim of economic necessity nor a lack of subjective bad-faith intent, even if proven, constitutes an adequate defense to an allegation that an employer has violated Sec. 8(a)(5) of the Act by failing to notify or bargain with the Union prior to the unilateral discontinuance of an existing benefit. *Westinghouse Electric Corp.*, 278 NLRB 424, 432 (1986). Accordingly, even if the July 26, 1991 letter constituted an adequate answer to the complaint, this defense would not preclude our granting the Motion for Summary Judgment.

dated July 26, 1991, indicating that it had discontinued providing health insurance coverage, but asserting inability to pay. This letter did not specifically admit, deny, explain, or state that the Respondent is without knowledge as to each and every allegation of the complaint.

In the light of the Respondent's failure to timely file an adequate answer, we grant the General Counsel's Motion for Summary Judgment.

#### FINDINGS OF FACT

##### I. JURISDICTION

The Respondent, a Pennsylvania corporation with its office and place of business in West Homestead, Pennsylvania, is engaged in the manufacture, repair, and nonretail sale and distribution of electric motors and related products. During the 12-month period ending April 30, 1991, in the course and conduct of its business operations, the Respondent purchased and received at its West Homestead, Pennsylvania facility products, goods, and materials valued in excess of \$50,000 from other enterprises, including Mosebach Electric and Supply Co. and Scott Electric Co., located within the Commonwealth of Pennsylvania, each of which other enterprises had received the products, goods, and materials directly from points outside the Commonwealth of Pennsylvania.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

##### II. ALLEGED UNFAIR LABOR PRACTICES

##### A. The Unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All production, maintenance, and service employees, including truckdrivers, employed by the Respondent at its West Homestead, Pennsylvania, facility; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act.

At all times material, the Union has been the designated exclusive collective-bargaining representative of the unit described above and has been recognized as such by the Respondent. Recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period June 29, 1989, to June 28, 1992.

##### B. The 8(a)(5) and (1) Violations

On or about March 19, 1991, the Respondent, without notice to and without affording the Union an opportunity to bargain, discontinued providing health insurance coverage for its employees, a mandatory subject of bargaining. Accordingly, we find that the Respondent has failed and refused to bargain collectively and in good faith with the Union as the representative of its employees, and that the Respondent thereby has engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSIONS OF LAW

By refusing to bargain with the Union by unilaterally discontinuing providing health insurance coverage for its employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to bargain with the Union. We shall also order the Respondent to reinstate the health insurance coverage for its unit employees, and to make employees whole for any losses they may have suffered because of its discontinuance as provided in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Homestead Electric & Machine Co., Inc., West Homestead, Pennsylvania, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Refusing to bargain with International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, Local 643, AFL-CIO by unilaterally discontinuing providing health insurance coverage for its unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit:

All production, maintenance, and service employees, including truckdrivers, employed by the Respondent at its West Homestead, Pennsylvania, facility; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act.

(b) Reinstate the employees' health care coverage and make them whole, plus interest, for any losses they may have suffered because of its discontinuance, in the manner set forth in the remedy section of this Decision and Order.

(c) Post at its facility in West Homestead, Pennsylvania, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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<sup>2</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, Local 643, AFL-CIO by unilaterally discontinuing providing health insurance coverage for our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union as the exclusive representative of our unit employees. The unit is:

All production, maintenance, and service employees, including truckdrivers, employed by us at our West Homestead, Pennsylvania, facility; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act.

WE WILL reinstate the employees' health insurance coverage and make them whole, plus interest, for any losses they may have suffered because it was discontinued.

HOMESTEAD ELECTRIC & MACHINE  
Co., Inc.